

***What Every Member of the  
Trade Community Should Know About:***

# ***Rules of Origin***

***(An Outline of Non-preferential  
and Preferential Rules)***



A Basic Level  
Informed Compliance Publication of the  
U.S. Customs Service

May, 1998

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "*informed compliance*" and "*shared responsibility*." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Office of Regulations and Rulings has prepared this publication on *Rules of Origin*, as part of a series of informed compliance publications advising the trade community of Customs procedures. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

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## **INTRODUCTION**

The origin of merchandise imported into the customs territory of the United States (the fifty states, the District of Columbia and Puerto Rico) is important for several reasons. The origin can affect the rate of duty, the entitlement for special programs, admissibility, quota, anti-dumping or countervailing duties, procurement by government agencies and marking requirements. Under the auspices of the World Trade Organization, there is a major international effort underway to develop uniform rules<sup>1</sup> of origin for international trade as a result of the Uruguay Round Agreements (under the former General Agreement on Tariffs and Trade or GATT). At such time as the WTO rules of origin are adopted, national legislation will have to be revised to implement those rules. In the meantime, origin rules vary from country to country and, even within a country, may vary for certain programs. This publication summarizes the various origin rules for goods imported into the customs territory of the United States. The discussion is divided into "non-preferential" and "preferential" rules of origin. "Non-preferential" rules are those which generally apply in the absence of bilateral or multilateral trade agreements. "Preferential" rules are applied to merchandise to determine eligibility for special treatment under various trade agreements or special legislation.

## **NON-PREFERENTIAL RULES OF ORIGIN**

### **OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME**

All U.S. non-preferential rules of origin schemes employ the "wholly obtained" criterion for goods that are wholly the growth, product, or manufacture of a particular country. On the other hand, all U.S. non-preferential rules of origin schemes employ the "substantial transformation" criterion for goods that consist in whole or in part of materials from more than one country. In the majority of the non-preferential schemes, the substantial transformation criterion is applied in a case-by-case manner that is based on a change in name/character/use method (i.e., an article that consists in whole or in part of materials from more than one country is a product of the country in which it has been substantially transformed into a new and different article of commerce with a name, character, and use distinct from that of the article or articles from which it was so transformed).

A rules of origin scheme for textiles and textile products exists that employs the substantial transformation criterion which is based on a tariff-shift method. Another rules of origin scheme for products imported from Canada or Mexico exists that also employs the substantial transformation

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<sup>1</sup> Note: Uniform rules for the valuation of imported merchandise were developed as the GATT (now WTO) Valuation Code in the late 1970's. Countries seeking WTO membership must adopt the code. In addition, uniform rules for the classification of merchandise for customs and trade purposes were developed by the Customs Cooperation Council/World Customs Organization in the 1980's as the "Harmonized Commodity Description and Coding System" or "Harmonized System." Approximately 85 countries, customs territories or customs unions are signatories to the Harmonized System Convention and another 65 have adopted it.

criterion which is based on a tariff-shift method. A brief discussion of each of the above-mentioned rules of origin schemes is set forth below.

### **Most-Favored-Nation (“MFN”) Treatment**

This rules of origin scheme is used to determine the country of origin of a product for purposes of MFN duty treatment. It employs the “wholly obtained” criterion for goods that are wholly the growth, product, or manufacture of a particular country. On the other hand, it employs the “substantial transformation” criterion for goods that consist in whole or in part of materials from more than one country. The substantial transformation criterion is based on a change in name/character/use method (i.e., an article that consists in whole or in part of materials from more than one country is a product of the last country in which it has been substantially transformed into a new and different article of commerce with a name, character, and use distinct from that of the article or articles from which it was so transformed).

### **Marking**

There are two sets of rules of origin schemes for country of origin marking purposes. The first scheme is used to determine the country of origin of a product for all countries **except** Canada and Mexico. It employs a rules of origin approach similar to that discussed above for MFN duty treatment. The second scheme is based on Annex 311 to the North American Free Trade Agreement (“NAFTA”). It is used for products imported from Canada or Mexico (see Part 102, Customs Regulations). For goods that consist in whole or in part of materials from more than one country, this scheme employs the substantial transformation criterion which is expressed or based exclusively on a tariff-shift method (which is based on the 1996 version of the Harmonized System). This scheme includes the following general rules:

- a *de minimis* test of 7 percent of value of a good except for goods of chapter 22 wherein the test is 10 percent of the value of a good and 7 percent of weight of textile goods (goods of chapters 1-4,7,8,11,12,15,17, and 20 are excluded from the *de minimus* test;
- a chemical reaction origin rule for the goods of chapters 28, 29, 31, 32 or 38);
- provisions relating to the treatment of certain packaging materials, accessories, spare parts, tools, indirect materials (neutral elements) in determining origin, and certain non-qualifying operations (e.g., mere dilution with water).

### **Government Procurement**

This rules of origin scheme is used to determine the country of origin of government procurement for the purpose of granting waivers of certain “Buy American” restrictions in U.S. laws or practice for products for eligible countries. For purposes of this scheme, an article is a product of a country or instrumentality only if:

- it is wholly the growth, product, or manufacture of that country or instrumentality, or

- in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from which it was so transformed.

### **Textile and Textile Products**

This rules of origin scheme is used to determine the country of origin for textiles and textile products for, among other things, the application of quotas. It employs the substantial transformation criterion which is expressed or based exclusively on a tariff-shift method (which is based on the 1996 version of the Harmonized System) and covers the headings and chapters of the Harmonized System relevant to textile and textile products. The tariff shift involved in the scheme may take several forms: heading to heading, heading to chapter, etc. A detailed discussion of these rules may be found in the publication entitled, “*What Every Member of the Trade Community Should Know About: Textile and Apparel Rules of Origin*” which is available on the Customs Electronic Bulletin Board and Customs website on the Internet: <http://www.customs.ustreas.gov> and in a special video tape. (See the ADDITIONAL INFORMATION section at the back of this publication.)

### **LEGISLATION AND IMPLEMENTING REGULATIONS**

Legislation and implementing regulations governing rules of origin in non-preferential regimes may be found as follows:

Government Procurement	19 U.S.C. §2511 <i>et seq.</i> (Specifically §2518(4)(B)) 19 CFR §177.21
Marking Rules of Origin	see 19 U.S.C. §1304 for marking requirement 19 CFR Part 134 19 CFR §102.0
Most-Favored-Nation Duty Assessment	No rules of origin are set forth in legislation, but see General Note 3 to Harmonized Tariff Schedule of the United States (19 U.S.C. §1202) for a discussion of duty rates and columns.
Textiles and Textile Products	7 U.S.C. §1854 19 U.S.C. §3592 19 CFR §12.130, 19 CFR §102.21

## **PREFERENTIAL RULES OF ORIGIN**

U.S. preferential rules of origin schemes are used for several special tariff programs:

- Andean Trade Preference Act
- Automotive Products Trade Act
- Caribbean Basin Initiative
- Generalized System of Preferences
- North American Free Trade Agreement
- Compact of Free Association Act
- Insular Possessions of the U.S.
- United States-Israel Free-Trade Agreement
- Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone

Most are set forth in the General Notes of the U.S. tariff schedule, i.e., the Harmonized Tariff Schedule of the United States (“HTSUS”). U.S. preferential rules of origin schemes employ the “wholly obtained” criterion for goods that are wholly the growth, product, or manufacture of a particular country. On the other hand, for goods that consist in whole or in part of materials from more than one country, the majority of U.S. preferential rules of origin schemes are based

- on a change in name, character, and use (substantial transformation) **and**
- on a required minimum local value content. Unless specified otherwise, the cost of foreign materials may not be included in local value content unless they undergo a double substantial transformation.

The NAFTA tariff preferential rules of origin (for goods that are not wholly obtained from the NAFTA region) are based on a tariff-shift method and/or regional value-content method.

Under these preferential programs, qualifying goods may enter the customs territory of the U.S. free of duty or at reduced rates of duty. A brief discussion of the rules of origin schemes which apply to each the above-mentioned programs is set forth below:

### **Andean Trade Preference Act (“ATPA”)**

The ATPA provides for the duty free entry of all but a few classes of merchandise from the following designated beneficiary countries: Bolivia, Ecuador, Colombia, and Peru. It is intended to encourage economic growth in those countries. Duty free treatment is granted under the ATPA to any otherwise eligible article which is the growth, product, or manufacture of a designated beneficiary country if:

- That article is imported directly from a beneficiary country into the U.S. customs territory **and**

- The sum of (1) the cost or value of materials produced in one or more Andean beneficiary countries **or** one or more Caribbean Basin Initiative beneficiary countries, **plus** (2) the direct costs of processing operations performed in one or more Andean or Caribbean Basin beneficiary countries, is at least 35 percent of the appraised value of the article.
  - Puerto Rico and the Virgin Islands are considered “beneficiary countries” for purposes of 35 percent local value content.
  - Up to 15 percent of the 35 percent local value content requirement may be attributable to the cost or value of materials produced in the United States.

### **Automotive Products Trade Act (“APTA”)**

The APTA implements into U.S. law the United States-Canada Automotive Agreement. The APTA provides for the duty free entry of motor vehicles and specified original equipment parts that qualify as “Canadian articles” under general note 5 to the HTSUS. The term “Canadian articles” refers to articles produced in Canada that satisfy the criteria for originating goods set forth in the NAFTA preferential rules of origin (as found in general note 12 to the HTSUS).

### **Caribbean Basin Initiative (“CBI”)**

The CBI is a program that provides for the duty free entry of all but a few classes of merchandise from the designated beneficiary countries or territories surrounding the Caribbean Sea. It is intended to encourage economic growth in those countries. Duty free treatment is granted under the CBI to any otherwise eligible article which is the growth, product, or manufacture of a designated beneficiary country if:

- That article is imported directly from a beneficiary country into the U.S. customs territory **and**
- The sum of (1) the cost or value of materials produced in one or more Caribbean Basin Initiative beneficiary countries, **plus** (2) the direct costs of processing operations performed in one or more Caribbean Basin beneficiary countries, is at least 35 percent of the appraised value of the article.
  - Puerto Rico and the Virgin Islands are considered “beneficiary countries” for purposes of 35 percent local value content.
  - Up to 15 percent of the 35 percent local value content requirement may be attributable to the cost or value of materials produced in the United States.

### **Generalized System of Preferences (“GSP”)**

The GSP is a program that provides for the duty free entry of all but a few classes of merchandise from the designated beneficiary developing countries or territories around the world. It is intended to encourage economic growth and development in those countries. Duty free treatment is granted



under the GSP to any otherwise eligible article which is the growth, product, or manufacture of a designated beneficiary developing country if:

- That article is imported directly from a beneficiary developing country into the U.S. customs territory **and**
- The sum of (1) the cost or value of materials produced in that beneficiary developing country (or produced in one or more members of an association of countries treated as one country under the GSP), **plus** (2) the direct costs of processing operations performed in that beneficiary developing country (or in one or members of an association of countries treated as one country under the GSP), is at least 35 percent of the appraised value of the article.

### **North American Free Trade Agreement (“NAFTA”)**

The NAFTA eliminates tariffs on most goods originating in Canada, Mexico, and the United States over a maximum transition period of fifteen years. These are origin rules for tariff preferential purposes. The origin rules for goods that are not wholly obtained from the NAFTA region are based on a tariff-shift method and/or regional value-content method. Detailed regulations implementing the NAFTA rules of origin may be found in the Appendix to Part 181 of the Customs Regulations (19 CFR Part 181, Appendix).

### **Compact of Free Association Act (“FAS”)**

The FAS provides for the duty free entry of all but a few classes of merchandise from the following freely associated states: Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. It is intended to encourage economic growth and development in those countries. Duty free treatment is granted under the FAS to any otherwise eligible article which is the growth, product, or manufacture of a freely associated state if:

- That article is imported directly from a freely associated state into the U.S. customs territory **and**
- The sum of (1) the cost or value of materials produced in that freely associated state **plus** (2) the direct costs of processing operations performed in that freely associated state is at least 35 percent of the appraised value of the article.
  - Up to 15 percent of the 35 percent local value content requirement may be attributable to the cost or value of materials produced in the United States.

### **Insular Possessions of the United States**

General Note 3(a)(iv) provides for the duty free entry of merchandise from the insular possessions of the United States that are outside the customs territory of the United States: U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, and Johnston Atoll. (For purpose of this provision, merchandise from the Commonwealth of the Northern Mariana Islands is given the same tariff treatment as merchandise from Guam.) Duty free treatment is granted

under General Note 3(a)(iv) to any article which is the growth, product, or manufacture of an insular possession of the United States if:

- That article is imported directly from the insular possession into the U.S. customs territory **and**
- The sum of (1) the cost or value of materials produced in the insular possession **plus** (2) the direct costs of processing operations performed in insular possession is at least 30 percent of the appraised value of the article or for certain articles such as textiles subject to textile agreements, 50 percent of the appraised value of such articles.
- All of the local value content requirement may be attributable to the cost or value of materials produced in the United States.

### **United States-Israel Free-Trade Agreement (“IFTA”)**

The IFTA provides for free or reduced rates of duty for merchandise imported into the United States from Israel. The IFTA is intended to stimulate trade between the United States and Israel. Reduced or duty free treatment is granted under the IFTA to any article which is the growth, product, or manufacture of Israel if:

- That article is imported directly from Israel, West Bank, Gaza, or a Qualifying Industrial Zone into the U.S. customs territory **and**
- The sum of (1) the cost or value of materials produced in Israel, West Bank, Gaza, or a Qualifying Industrial Zone, **plus** (2) the direct costs of processing operations performed in Israel, West Bank, Gaza, or a Qualifying Industrial Zone, is at least 35 percent of the appraised value of the article.
- Up to 15 percent of the 35 percent local value content requirement may be attributable to the cost or value of materials produced in the United States

### **Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone**

General Note 3(a)(v) provides for duty free entry of merchandise imported into the United States from the West Bank, Gaza, or a Qualifying Industrial Zone. This provision is intended to promote peace within that region by stimulating economic growth and trade between those areas and the United States and Israel. Reduced or duty free treatment is granted under this program to any article which is the growth, product, or manufacture of the West Bank, Gaza, or a Qualifying Industrial Zone if:

- That article is imported directly from the West Bank, Gaza, or a Qualifying Industrial Zone or Israel into the U.S. customs territory **and**
- The sum of (1) the cost or value of materials produced in the West Bank, Gaza, or a Qualifying Industrial Zone or Israel, **plus** (2) the direct costs of processing operations performed in the west Bank, Gaza, or a Qualifying Industrial Zone or Israel, is at least 35 percent of the appraised value of the article.

- Up to 15 percent of the 35 percent local value content requirement may be attributable to the cost or value of materials produced in the United States.

## **BACKGROUND TO PREFERENTIAL RATES OF DUTY**

### **Trade Initiatives**

As indicated above, preferential rates of duty are derived from the following trade initiatives:

<i>Initiative</i>	<i>Status</i>	<i>Preference Flow</i>
Andean Trade Preference Act	Unilateral	Non-reciprocal
Automotive Products Trade Act	Bilateral	Reciprocal
Caribbean Basin Economic Recovery Act	Unilateral	Non-reciprocal
Generalized System of Preferences	Unilateral	Non-reciprocal
North American Free Trade Agreement	Trilateral	Reciprocal
Compact of Free Association Act	Unilateral	Non-reciprocal
Products of Insular Possessions	Unilateral	Non-reciprocal
United States-Israel Free Trade	Bilateral	Reciprocal
Products of the West Bank, Gaza Strip or a Qualifying Industrial Zone	Unilateral	Non-reciprocal

### **U.S. Tariff Schedule**

The Harmonized Tariff Schedule of the United States (HTSUS) lists the eligible products and preferential rates of duty throughout the schedule for particular special tariff programs. The rates of duty for the preferential tariff programs are generally found in the duty sub-column entitled "Special." A summary of the symbols used in the "Special" sub-column and a list of the programs they represent may be found in General Note 3(c) to the HTSUS. Some articles may be subject to temporary modifications under Chapter 99, HTSUS. An explanation of these modifications may be found in General Note 3(c), and General Notes 4-14. As indicated above, the goods must meet the requirements for the particular special tariff program in order to be eligible for the preferential rate of duty.

## **LEGISLATION AND IMPLEMENTING REGULATIONS**

- Andean Trade Preference Act                      General Note 11 to HTSUS (19 U.S.C. § 1202)  
19 U.S.C. § 3201
- Automotive Products Trade Act                      General Note 5 to HTSUS (19 U.S.C. § 1202)  
19 C.F.R. § 10.84  
19 U.S.C. § 2001
- Caribbean Basin Economic Recovery Act                      General Note 7 to HTSUS (19 U.S.C. § 1202)  
19 C.F.R. § 10.191  
19 U.S.C. § 2701
- Generalized System of Preferences                      General Note 4 to HTSUS (19 U.S.C. § 1202)  
19 C.F.R. § 10.171  
19 U.S.C. § 2461
- North American Free Trade Agreement Implementation Act                      Article 401 of the North American Free Trade Agreement: Tariff Preferential Rules  
General Note 12 to HTSUS (19 U.S.C. § 1202)  
19 C.F.R. § 181.131, Appendix  
19 U.S.C. § 3332
- Compact of Free Association Act                      General Note 10 to HTSUS (19 U.S.C. § 1202)
- Products of Insular Possessions                      General Note 3(a)(iv) to HTSUS (19 U.S.C. § 1202)  
19 C.F.R. § 7.2-§7.3 (T.D. 97-75)
- Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone                      General Note 3(a)(v) to HTSUS (19 U.S.C. § 1202)  
19 U.S.C. § 2112, note
- United States-Israel Free Trade Area Implementation Act                      General Note 8 to HTSUS (19 U.S.C. § 1202)  
19 U.S.C. § 2112, note

## **PUBLICLY AVAILABLE DOCUMENTS**

Application of the various rules of origin to specific factual circumstances may be found in United States Customs Service administrative rulings and United States federal court decisions.

Interested parties may gain access to the various origin rulings, regulations and laws through a variety of media, all of which are publicly available (See the ADDITIONAL INFORMATION section at the end of this publication).

## **RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN**

Pursuant to 19 U.S.C. §§1481, 1484, and implementing regulations, importers of record are required to use “reasonable care” to declare the correct country of origin of imported goods. United States Customs Service officials at the ports of entry into the United States are responsible for verifying the accuracy of those declarations during the clearance of goods through customs. That responsibility is discharged and monitored through the review of pertinent documents (or electronically transmitted information) and through selected audits of the merchandise and the importer. Pertinent entry documents (which may include declarations) are used to declare the country of origin of a good for the non-preferential rules of origin regime. Incorrect country of origin information may lead to delays and detentions and, if the country of origin affects admissibility, to denials of entry. In addition, negligent or fraudulent country of origin information can lead to monetary penalties or, in certain cases, to criminal sanctions.

## **OBTAINING PRE-IMPORTATION (ADVANCE) RULINGS**

As explained above, it is the responsibility of the importer of record to use “reasonable care” declare the correct country of origin. In order to meet the reasonable care requirement, a person may use the services of an expert or seek a pre-importation or advance ruling from U.S. Customs.

### **General Requirements for Origin Ruling Requests**

Subject to special provisions for certain government procurement and NAFTA rulings (which are both discussed below), Subpart A of Part 177 of title 19 of the Code of Federal Regulations (19 CFR Part 177, Subpart A) permits interested persons to obtain a binding ruling on prospective importations into the United States. An origin ruling in advance of importation may be obtained by submitting a written request to:

Chief, Special Classification and Marking Branch,  
Office of Regulations and Rulings,  
U.S. Customs Service,  
1300 Pennsylvania Avenue, NW,  
Washington, DC 20229

Marking ruling requests may also be submitted to:

Director, National Commodity Specialist Division,  
U.S. Customs Service, Attn: Classification Ruling Requests,  
6 World Trade Center, New York, NY 10048,

The ruling will be binding at all ports of entry unless modified or revoked by the U.S. Customs Service's Commercial Rulings Division of the Office of Regulations and Rulings, pursuant to 19 U.S.C. §1625, or overturned by a federal court. In some cases, Customs may issue an information letter or guidance rather than a ruling.

Any person intending to export merchandise to the United States or to import merchandise into the United States may seek a pre-importation ruling from the U.S. Customs Service in order to avoid problems or difficulties concerning their merchandise.

The following information must be submitted as part of a pre-importation ruling request:

- The names, addresses and other identifying information of all interested parties (if known) and the manufacturer identification code (if known).
- The name(s) of the port(s) in which the merchandise will be entered (if known).
- A description of the transaction, for example, a prospective importation of (merchandise) from (country).
- A statement that there are, to the best of the exporter's or importer's knowledge, no issues concerning the commodity for which a ruling is sought pending before the U.S. Customs Service (including by any U.S. Customs Service field office or at any port of entry) or before any court (including the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit).
- A statement indicating whether advice has been previously sought from the U.S. Customs Service concerning the commodity for which a ruling is sought, and if so, then from whom and what advice was rendered, if any.

Ruling requests must contain sufficient information to enable the U.S. Customs Service to determine the proper tariff classification and country of origin of the merchandise. Accordingly, ruling requests should include the following information:

- A complete and detailed written description of the goods. Samples (if practical), list of ingredients and percentages thereof, sketches, diagrams, or other illustrative material should be submitted with the request if useful in supplementing the written description.

- Cost breakdowns of component materials or parts and their respective quantities shown in percentages of the goods, if possible.
- A description of the principal use of the goods, as a class or kind of merchandise, in the United States.
- Information as to the commercial, scientific, technical or common name or designation of the merchandise (or as otherwise may be applicable).
- A detailed description of each of the manufacturing or production processes which the goods undergo, and the country or countries in which they are performed.
- Any other information or materials that may be pertinent or required for classifying the merchandise and determining its origin.

### **Government Procurement Advisory Rulings and Determinations**

If the ruling is for the purpose of determining origin for government procurement eligibility, the procedures in 19 CFR Part 177, Subpart B (Sections 177.21- 177.31) must be followed. Country of origin rulings in the government procurement arena fall into two categories: “advisory rulings” and “final determinations.” An advisory ruling is a non-binding, non-reviewable written statement which calls attention to a well established interpretation or principle of law relating to the country of origin without applying it to a particular set of facts. A final determination is a binding, judicially reviewable statement issued by Customs in response to a written request under 19 CFR 177, Subpart B that interprets and applies the provisions of law and regulation relating to the country of origin to a specific set of facts. Country of origin rulings may be requested under Subpart B by:

- foreign manufacturers, producers or exporters or U. S. importers;
- manufacturers, producers, or wholesalers in the U. S. of like products;
- U. S. members of labor unions or workers’ organizations who are employed in the manufacture, production or wholesale in the U. S. of like products; or
- trade or business associations, a majority of whose members manufacture, produce or wholesale a like product in the U. S.

A request for an advisory ruling shall be in writing and shall contain such information as will enable Customs to provide the requester with the applicable principle of law or well established interpretation relating to the particular country of origin. A request for a final determination shall be in writing and shall contain the following information:

- The name of the requester, the requester's principal place of business, and a statement that the requester is authorized to file the request under the provisions of §177.24;
- A description of the existing article for which a country-of-origin determination is requested;

- The country or instrumentality an article is claimed to be the product of;
- Such further information as will enable Customs to determine if an article is a product of a specific country or instrumentality, and;
- If applicable, the specific procurement for which the final determination is requested.

Customs will issue an advisory ruling in response to a request for a final determination if:

- The request suggests that general information, rather than a final determination, is actually being sought,
- The request is incomplete or otherwise fails to meet the requirements set forth in §177.25(a), or
- The ruling requested cannot be issued for any other reason, and Customs believes that the general information supplied by an advisory ruling may be of some benefit to the party making the request.

An advisory ruling is not a ruling issued prior to importation under 28 U.S.C. 1581(h). Notices of a final determination are published in the Federal Register and are subject to administrative reconsideration and judicial review.

Procurement ruling requests should be submitted to:

Office of Regulations and Rulings,  
U. S. Customs Service,  
1300 Pennsylvania Avenue, NW,  
Washington, DC 20229

### **NAFTA Advance Rulings**

In the case of NAFTA transactions, requests for rulings may fall under Part 177 or 19 CFR Part 181, Subpart I (19 CFR 181.92, *et seq.*) depending on the nature of the request. Part 181, Subpart I sets forth the rules which govern the issuance and application of advance rulings under Article 509 of the NAFTA and the procedures which apply for purposes of review of advance rulings under Article 510 of the NAFTA. Importers in the United States and exporters and producers located in Canada or Mexico (or their duly authorized agents) may request and obtain an advance ruling on a NAFTA transaction only in accordance with the provisions of Subpart I whenever the requested ruling involves the subject matters specified in §181.92(b)(6), which are summarized as follows:

- Whether materials imported from a country other than the U. S., Canada or Mexico and used in the production of a good undergo an applicable change in tariff classification, as a result of production occurring entirely in the United States, Canada and/or Mexico;
- Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method;
- For purposes of determining whether a good satisfies a regional value-content requirement, the appropriate basis or method for value to be applied by an exporter or a producer in



- Canada or Mexico, for calculating the transaction value of the good or of the materials used in the production of the good;
- For purposes of determining whether a good satisfies a regional value-content requirement, the appropriate basis or method for reasonably allocating costs, for calculating the net cost of the good or the value of an intermediate material;
  - Whether a good qualifies as an originating good;
  - Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment;
  - Whether the proposed or actual marking of a good satisfies country of origin marking requirements;
  - Whether an originating good qualifies as a good of Canada or Mexico under Annex 300 - B, Annex 302.2 and Chapter Seven of the NAFTA; and
  - Whether a good is a qualifying good under Chapter Seven of the NAFTA.

Accordingly, the provisions of Subpart I of Part 181 apply in lieu of the administrative ruling provisions contained in subpart A of part 177 of this chapter except where the request for a ruling involves a subject matter not specified in §181.92(b)(6).

A request for an advance ruling under NAFTA should be written in English in the form of a letter directed either to:

Commissioner of Customs,  
Attention: Office of Regulations and Rulings,  
1300 Pennsylvania Avenue, NW,  
Washington, DC 20229,

or to:

National Commodity Specialist Division,  
United States Customs Service,  
6 World Trade Center,  
New York, NY 10048

unless the subject matter relates to regional value content, in which case it must be directed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229. The request for an advance ruling must be signed. An advance ruling requested by a principal or authorized agent may direct that the advance ruling letter be addressed to the other.

Each request for an advance ruling must identify the specific subject matter to which the request relates, and must contain:

- A complete statement of all relevant facts relating to the NAFTA transaction and must state that the information presented is accurate and complete;
- The names, addresses, and other identifying information of all interested parties (if known);
- The name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the

- transaction; and
- a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling.

Where the request for an advance ruling is submitted by or on behalf of the importer of the good involved in the transaction, the request must include the name and address of the exporter and, if known, producer of the good. Where the request for an advance ruling is submitted by or on behalf of the exporter of the good involved in the transaction, the request must include the name and address of the producer and importer of the good, if known. Where the request for an advance ruling is submitted by or on behalf of the producer of the good involved in the transaction, the request must include the name and address of the exporter and importer of the good, if known.

In addition, where relevant to the issue that is the subject of the request for an advance ruling, and regardless of the specific nature of the advance ruling requested, the request must include:

- A copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued by Customs to the person submitting the request; or
- Sufficient information to enable Customs to classify the good where no advance ruling or other ruling with respect to the tariff classification of the good has been issued by Customs to the person submitting the request. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, and product literature, drawings, photographs or schematics.

The prospective Customs transaction to which the advance ruling request relates must be described in sufficient detail to permit proper application of the relevant NAFTA provisions.

In addition, 19 CFR 181.93 lists **specific** requirements for the rulings listed below:

- Tariff change rulings
- Issues involving a change in tariff classification of a material
- NAFTA rulings on regional value content
- NAFTA rulings on producer materials

Each request for an advance ruling should be accompanied by photographs, drawings, or other pictorial representations of the good and, whenever possible, by a sample of the good (which may be damaged or consumed in the course of examination, testing, analysis, or other actions) unless a precise description of the good is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CAS number, and related information.

If the question or questions presented in the advance ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted

with the request. The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the advance ruling request.

Each request for an advance ruling must also state:

- Whether, to the knowledge of the person submitting the request, the same transaction or issue, or one identical to it, has ever been considered, or is currently being considered by any Customs office;
- Whether, to the knowledge of the person submitting the request, the issue involved has ever been, or is currently, the subject of:
  - Review by the United States Court of International Trade, or any court of appeal therefrom, or review by a judicial or quasi-judicial body in Canada or Mexico;
  - A verification of origin performed in the United States, Canada or Mexico;
  - An administrative appeal in the United States, Canada or Mexico; or
  - A request for an advance ruling under this subpart, or a request for an advance ruling in Canada or Mexico under an appropriate authority referred to in §181.76 of the regulations; and
- The status or disposition of any of these matters; and
- Whether the transaction described in the advance ruling request is but one of a series of similar and related transactions.

### **FOIA and Information Submitted for a Ruling Request**

As a general rule, no part of a ruling is deemed to constitute privileged or confidential commercial or financial information or trade secrets unless confidentially was requested as provided for in 19 CFR § 177.2(b)(7), or 181.93(b)(7) and granted as provided for in 19 CFR § 177.8(a)(3), or 181.99(a)(3). Pursuant to 19 U.S.C. § 1625, rulings are published electronically (see below). Information submitted to the U.S. Customs Service as part of a ruling request may be disclosed or withheld in accordance with the provisions of the Freedom of Information Act, as amended. *See* 5 U.S.C. § 552 and 19 CFR § 177.8(a)(3).

### **Administrative Appeal Rights and Procedure**

A recipient of a pre-importation ruling who disagrees with the decision contained in the ruling may seek an administrative review of the decision from the Director, Commercial Rulings Division, Office of Regulations and Rulings, U. S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229. A request for an administrative review of a decision contained in a pre-importation ruling must be in writing and must set forth the basis for disagreement with the decision and provide all information and materials necessary to conduct a proper and complete review.

### **Availability of Rulings Issued by the U.S. Customs Service**

Administrative rulings issued by the U.S. Customs Service are available (1) by subscription on diskettes from the U.S. Customs Service (Legal Reference Staff, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229. (Telephone number: 202-927-2257. Facsimile number: 202-927-3318) and (2) free of charge from the U.S. Customs Service's world wide web site: URL (Internet) address: <http://www.customs.ustreas.gov>. The rulings are also available from various commercial sources.

### **POST IMPORTATION REVIEW PROCEDURES**

After importation, one may seek an administrative review of a country of origin determination by the United States Customs Service by protesting the decision to the Customs Service. A protest will result in the decision being internally reviewed by the Customs Service at a higher level of authority than the level at which the decision was originally rendered. If not satisfied with the decision resulting from a protest, one may seek judicial review of the decision by the United States Court of International Trade. If not satisfied with the decision by the United States Court of International Trade, one may seek review of the decision through an appeal to the United States Court of Appeals for the Federal Circuit. Finally, if not satisfied with the decision of the United States Court of Appeals for the Federal Circuit, one may request a review of the decision by the United States Supreme Court (the final court of review at the federal level in the United States).

### **ADDITIONAL INFORMATION**

#### **Customs Electronic Bulletin Board**

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. The CEBB may be accessed by modem or through Customs Home Page on the World Wide Web. If you access it by modem, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 921-6236.

## **The Internet**

The Customs home page on the Internet's World Wide Web --which began public operation on August 1, 1996-- also provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be searched, read online, printed or "downloaded" to your own PC. In addition, the CEBB (see above) may be accessed through our Home Page. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

## **Customs Regulations**

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1998 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1997 through March, 1998 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

## **Customs Bulletin**

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U. S. Court of International Trade and Customs related decisions of the U. S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

## **Video Tapes**

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new *Rules of Origin for Textiles and Apparel Products* which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to:

U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

In order to assist the trade, Customs has prepared a video tape entitled "Customs Compliance: Why You Should Care." This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at \$15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

### **Informed Compliance Publications**

The U. S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- Fibers & Yarns
- Buying & Selling Commissions
- NAFTA for Textiles & Textile Articles
- Raw Cotton
- Customs Valuation
- Textile & Apparel Rules of Origin
- Mushrooms
- Marble
- Peanuts
- Caviar

- [Bona Fide Sales & Sales for Exportation](#)
- [Caviar](#)
- [Granite](#)
- [Internal Combustion Piston Engines](#)
- [Vehicles, Parts and Accessories](#)
- [Articles of Wax, Artificial Stone and Jewelry](#)
- [Classification of Festive Articles](#)
- [Tariff Classification](#)
- [Ribbons & Trimmings](#)
- [Footwear](#)
- [Agriculture Actual Use](#)
- [Reasonable Care](#)
- [Drawback](#)
- [Lamps, Lighting and Candle Holders](#)
- [Rules of Origin](#)

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

### **Other Value Publications**

*Customs Valuation under the Trade Agreements Act of 1979* is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

*Customs Valuation Encyclopedia* (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).